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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 773

LEVERT H. TAYLOR, HAROLD L. BETHUNE, DELORES McGINNIE, DAVID JAMES DENNIS AND HARRY BLAKE,

Petitioners,

versus

STATE OF LOUISIANA,

Respondent.

RESPONSE TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.

Brief of the State of Louisiana to the Louisiana Supreme Court Filed in Support of Its Opposition to the Application to That Court by These Petitioners for Writ of Certiorari Is Attached as Appendix Hereof.

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May It Please the Court:

To the Honorable, the Chief Justice and the Honorable Associate Justices of the Supreme Court of the United States:

In compliance with your Honors' request as communicated by letter from Honorable John F. Davis, Clerk, dated April 16, 1962, we are pleased to submit below a response to the petition for a writ of certiorari to the Supreme Court of the State of Louisiana.

QUESTION PRESENTED.

These petitioners were convicted of violating the Revised Statutes of Louisiana of 1950, Title 14, Section 103.1 (R. S. 14:103; Criminal Code of La. Article 103.1), these petitioners having been charged in a bill of information in the First District Court of Louisiana with violation of Article 103.1 of the Louisiana Criminal Code (R. S. 14:103.1) in that they did, with intent to provoke a breach of the peace and under circumstances such that breach of the peace might have been occasioned thereby, crowd and congregate in a described public place and did fail and refuse to disperse and move on when ordered so to do by a law enforcement officer, namely, Harvey D. Teasley, Chief of Police, City of Shreveport, Louisiana.

FACTS OF THE CASE.

The facts of this case are as follows:

At approximately 4:00 A. M. on August 4, 1961, Captain Doyal, on night duty at the Shreveport Police Station, received a telephone call notifying the Police Department that there would be several people at the Shreveport Bus Station shortly after 5:00 A. M. to depart on a bus between 5:30 and 6:00 A. M., and requesting that there be "plenty of police officers" on hand. Captain Doyal immediately reported this to the Assistant Chief of Police (Major Giglio), who in turn notified the Chief of Police at the latter's home.

Shortly after that Captain Doyal received another phone call relative to the possibility of a disturbance and breach of the peace at the Trailways Bus Station. Captain Doyal likewise reported this to Giglio, but the latter

did not report the second call to Chief Teasley. (On the trial of this case it was proven that the first phone call was made by David Dennis, who did not identify himself by name but did identify himself as being president of the local chapter of CORE. Likewise, it was proven that Dennis informed the news media that there was going to be a disturbance at the bus station.)

On trial, Chief Teasley testified that while he did not receive notice of the second phone call, he did receive notice from a reliable source that there would be a disturbance and possible breach of the peace at the bus station on that morning, this source not being known to Doyal or Giglio. Therefore, there were actually three contacts made to the Chief of Police and Assistant Chief relative to anticipated trouble at the Trailways Bus Station on that morning.

The evidence showed that the defendants claimed that Bethune had earlier in the week given Dennis funds to buy Bethune's bus ticket, that Levert Taylor bought a bus ticket prior to August 4, that Dennis bought two tickets on Wednesday, August 2, and three tickets on Thursday, August 3, 1961. But when the six persons were arrested the only tickets found in their effects were four tickets in the possession of Bethune.

These defendants had had meetings on several occasions prior to August 4, relative to the purported planned bus "trip" (?) in this case, the last one being a conference between Dennis and Blake at Blake's home the day before. At the meeting at Blake's home, Blake agreed to assist Dennis in the matter. On the date in question they

all had agreed that Bethune would do all the talking for the group.

The evidence showed that on the morning of August 4 Bethune in his car picked up Levert Taylor and then went to the home of David Dennis. Dennis had made arrangement for Blake to bring his car in case they were able to get more people. Bethune, Dennis and Taylor, then in Bethune's car (with Dennis driving the vehicle), picked up the two McGinnie sisters and returned to the home of David Dennis. At that time Blake had arrived in his car. Blake left his car there at the home of Dennis and all six proceeded in Bethune's car to the bus station, with Dennis driving the car.

Meanwhile, in order to avert trouble and to prevent a breach of the peace, Major Giglio had pulled in a patrol car with two officers from the residential area, also a patrol wagon with one officer, and then proceeded to the bus station with a lieutenant from headquarters. There Major Giglio assigned those officers, himself, and a foot patrolman on the beat, to various places on the outside of the bus station.

The Caddo Sheriff's Department likewise stationed deputy sheriffs at various points on the outside of the bus station, as well as approximately four or five deputy sheriffs on the inside of the station. Chief Teasley arrived with Major Thomas and Major Richards and went into the inside of the station.

On the west side of the bus station are two entrances, one being plainly marked "Interstate Passengers"

and the other "Intrastate Passengers." The west side is also used for the unloading of passengers for incoming buses.

Shortly after City Police Officers Meacham and Guthrie were stationed on the west side, a bus arrived and a number of passengers disembarked, including soldiers and civilians, both white and colored persons. They began to crowd and congregate at the unloading area and **Officer Meacham ordered them to disperse and move on, which they did, and they were NOT arrested.** During that time, at the south side and east side of the bus station, **other officers ordered persons to disperse and move on, which they did, and they were NOT arrested.**

Dennis and Blake arrived in Bethune's car at the north end of the bus station by proceeding down an alley. They discharged the other four defendants and then sped away and were later seen a block away from the bus station, parked several feet from the curb, where they could look through adjoining parking lots and observe the activities around the bus station.

Bethune, Taylor and the two McGinnie sisters walked from the north end of the building; they walked past the door marked "Interstate Passengers," and when they reached Officer Meacham he learned from them that they were looking for the interstate entrance. He pointed out to them that they had just walked past the interstate entrance and directed them to that entrance. They insisted upon going through the "Intrastate Passengers" entrance, and he made no effort to stop them.

As soon as those four defendants entered the intrastate passenger room, many of the people therein became excited, restless and agitated. Almost all of them scattered about, some climbing over seats and some standing on seats. The four defendants proceeded on into the center of the room and congregated there.

Meanwhile, Officers Meacham, Guthrie and Dent (the foot patrolman on the beat) ordered various **other people to move on, which they did, and they were NOT arrested.** Among such persons were the people who had climbed up on the seats, those who were standing in the seats, those who had become excited in the restaurant (and adjoining room) and who had erupted into the intrastate passenger room, some colored porters on and near the stairs, and some young teen-age white boys who were crowded and congregated around a pinball machine.

When this was done, the **cafe patrons moved on back into the cafe and were NOT arrested.** The **colored porters moved on upstairs and elsewhere** about their business, **and they were NOT arrested.** The group of **white teen-age boys moved on out entirely from the building, and they were NOT arrested.** The other persons in that part of the bus station **moved on, as ordered, to other seats, or to the outside of the building,** so that there would be no further disturbance or breach of the peace, **and they were NOT arrested.**

When Chief of Police Harvey D. Teasley approached Bethune and his three companions, they told him that they were interstate passengers and wished to buy tickets. He then ordered them to move on to the

counter which serviced the interstate passengers. The four defendants refused to do so and then said they wished to get some schedule information. Chief Teasley told them that they could get the schedule information at the same ticket counter which serviced interstate passengers and ordered them again to move on to that location.

The four defendants then said that they were interstate passengers and had certain rights under Federal rulings and again refused to disperse and move on. Chief Teasley notified them that if they did not disperse and move on they would be in violation of City and State laws and that if they continued to refuse to obey his order they would be arrested.

Whereupon, Bethune, acting as spokesman for the group, said, "We have no choice; go ahead and arrest us." They never exhibited any of the tickets which Dennis and Taylor had previously bought.

They were then arrested and taken to jail. Blake and Dennis, still seated in Bethune's car parked away from the curb a block away from the bus station, were arrested. Being accessories before the fact, they were charged as principals pursuant to Article 24 of the Louisiana Criminal Code (R. S. 14:24), because they aided and abetted, counseled and procured the other four defendants to commit the crime charged.

The evidence on the trial showed that **all of the persons at the Trailways Bus Station that morning who were ordered to disperse or to move on did so with the**

sole exception of the four defendants on trial who went into the intrastate entrance. Those other persons who did disperse and move on and were **not** arrested included white persons, colored persons, soldiers, civilians, colored employees, restaurant patrons, passengers and non-passengers in the waiting room and on the east, west and south side of the bus station building.

The evidence also showed that about a month prior to this case two white people and two colored people, who were already interstate passengers, having come from Arkansas, went through the intrastate entrance, and when they were ordered to disperse and move on, **just exactly as in this case, they obeyed the officers' order and were NOT arrested.**

There was also considerable evidence showing that this statute has been used and officers had ordered people to disperse and move on, on many prior occasions, such as:

> On the sidewalk in front of H. L. Green Variety Store;
>
> At the Commercial National Bank corner;
>
> At the entrance to a billiard parlor known as the Subway;
>
> At certain buildings out on the State Fair Grounds where young white teen-age boys were often inclined to congregate;
>
> At various drive-in restaurants where young white teen-age boys occasionally congregated; and also around automobiles parked on the outside of certain restaurants.

In those cases this statute was used and **the persons, both white and colored, were ordered to move on, they did move on, and they were NOT arrested.**

On the trial of the case, the only evidence offered by the defense consisted of the testimony of the defendants, Bethune and Blake. The trial Court specifically held as unworthy of belief the testimony of Blake and Bethune, particularly when they said "they did not know what was planned or what was about to happen or what was going to transpire."

Dennis did not testify, although he was the one who drove Bethune's car, both in taking the other four persons to the bus station and also in parking it with Blake at a point a block away, where they could watch the activities. The trial judge held, in discussing **some** of the evidence:

> "In this case the attempt, I think, to create a disturbance was planned and deliberate. Evidence uncontradicted shows that there were meetings at which these defendants, perhaps with others, planned this excursion, and that one of the defendants, Dennis, called the police and alerted them. He could have only had one of two purposes, or maybe both, for such a call. One was publicity, and the other was protection. He received the protection."

In this connection, there was considerable doubt as to whether the four defendants really intended to make a bus "trip" at all. In reality their actions indicated an intention merely to provoke a breach of the peace,

cause a disturbance, and cause their own arrest. This is borne out by the following facts proved on the trial:

Dennis made telephone calls to the police and news media, whereas this is most unusual when a person is not contemplating trouble;

Among their effects Taylor had no funds (either cash or checks), Marie McGinnie had only $3.00 cash, Deloris McGinnie had only $5.00 cash, and Bethune had only $5.03, making a total of only $13.03 in funds for four passengers purporting to go to a distant city in another state;

There was no evidence that any of them had any relatives or other means of living accommodations available to them in the other state, even though Bethune was cross-examined at length on this score and was given every opportunity to make a showing in that regard;

If the four defendants had been sincere in their proclaimed intention of going to Mississippi, nothing took place which prevented their doing so EXCEPT their refusal to move on after being ordered at least three times to do so and after also being warned specifically that they would be arrested if they did not obey the order; and

Although their "proclaimed" destination was Jackson "their objective was trouble," as the trial Court so held.

MOTION TO QUASH DISCUSSED.

The motion to quash and argument thereof was based on the defendants' claim that:

(a) The statute allegedly lacks certainty and fixes no ascertainable standard of guilt as required by Article 1, Section 10, of the Louisiana Constitution and the Sixth Amendment to the U. S. Constitution.

(b) The statute allegedly violates the defendants' rights to peacefully assemble.

(c) The statute allegedly violates the equal protection clause of the Fourteenth Amendment to the Federal Constitution because it excludes labor unions.

(d) The statute allegedly violates the due process and equal protection clauses of the Fourteenth Amendment to the U. S. Constitution because it allegedly furthers and maintains forced segregation.

(e) Alternatively, the statute allegedly violates the equal protection and due process clauses of the Fourteenth Amendment to the U. S. Constitution in that the statute purportedly makes it possible to punish these defendants merely because of their alleged attempt to use "facilities" in interstate commerce.

MOTION TO QUASH FURTHER DISCUSSED.

In answer to the claims of the motion to quash, the State of Louisiana shows that the motion to quash was properly overruled by the trial Court for the following reasons, among others (all of which will be amplified and supported by authorities in the brief in support of this opposition, which brief is attached hereto and made a part hereof as Appendix A):

(a) The statute has several essential ingredients, such as:

"With the intent to provoke a breach of the peace";

"Under circumstances such that a breach of the peace might be occasioned thereby";

"Crowding or congregating with others," in certain specific designated and described public places, structures or buildings; AND

"Failing to disperse, or failing to move on, or failing to disperse and move on, when ordered so to do by certain specified officers of the locality in which the acts were committed."

The Louisiana Supreme Court has repeatedly held that the test to determine whether a statute or charge complies with Article 1, Section 10, of the Louisiana Constitution and the Sixth Amendment to the U. S. Constitution are:

(1) Whether it informs the accused of the nature and cause of the offense;

(2) Whether it is such that the Court may properly regulate evidence sought to being introduced; and

(3) Whether it is sufficient to support a plea of former jeopardy.

Judge O'Neal rendered a written opinion on the motion to quash (a copy of that opinion is attached hereto [see Appendix B] and made a part hereof inasmuch as it was not included in the defendants' copy of the application for writs served upon the district attorney and same should be made a part of the record in this cause).

In that opinion, Judge O'Neal specifically held, referring to the contention as to lack of clarity:

> "The words used are of common import, and such persons can clearly understand same."

(b) We know of no right of persons to "peacefully assemble" in a bus station with the intent to provoke a breach of the peace or under circumstances such that a breach of the peace may be occasioned thereby, particularly where, under the current statute all that they need to do to show that they do **not** intend to provoke a breach of the peace is to move on when ordered so to do by a peace officer.

While persons may have a right to peacefully assemble, when such purported assembly is not in a meeting place and, on the contrary, is out in the public, their right must not interfere with the other rights of the public and must yield to disturbing the peace statutes such as this one, duly enacted under the police power of the State in protection of the health, welfare and peace of the community.

(c) The claim set forth in the fourth paragraph in the motion to quash relating to "forced segregation" is nothing more than the customary claim for colored people when they wish to lay the groundwork to get into the United States Supreme Court. This claim is substantially answered in the following language from a Federal Court decision in *Brown v. The City of Wisner*, 122 F. Supp. 736:

> "Presented here, with complacent confidence, is one more of the frequent efforts, simply by waving the

> Constitution on high, to open the doors of Federal Courts for adjudication of purely local and private disputes. Widespread belief apparently prevails in some quarters that a sort of 'Open Sesame' is found in the Fourteenth and Fifteenth Amendments: that no matter how devoid of true constitutional issues or substantial Federal questions such cases may be, with those magic words they may call forth the full powers of the Federal judiciary in aid of claims for which they may have complete redress in State Courts, where they properly belong."

As Judge O'Neal ruled, "The statute applies to all persons whether white or colored and has no reference whatever to the segregation of the races" and in many instances "the statute applies to places not covered by any segregation statute."

(d) While they claimed to be desiring to buy tickets for interstate commerce, they already had tickets, according to their testimony; then they claimed they wanted schedule information, although Dennis had already, by telephone, informed the Police Department and the news media that these people would be leaving on a bus between 5:30 and 6:00 A. M.

In response to both of those statements, the Chief of Police ordered the group to move on to the counter servicing the interstate passengers. Moreover, in view of the phone calls by Dennis, and in view of the small amount of money in possession of the four defendants who entered the intrastate entrance and the lack of arrangements for rooming quarters at their purported des-

tination, their "status as interstate passengers is extremely doubtful."

If they claimed to be interstate passengers, their actions belied their claim, because, if they were such, there was no need for Dennis to telephone the Police Station and the news media and there was no need for Bethune, the spokesman for the four purported passengers, to make false statements to the Chief of Police.

Moreover, as Judge O'Neal ruled:

> "A person may have the legal right to go to his church or walk upon the streets, but he cannot do it if he breaches the peace in so doing.
>
> "Under the terms of the statute, if six white persons did the same thing that these six defendants are charged with having done, they would be subject to prosecution for the same offense."

(f) Additionally, the statute in question is identical with Section 2087.5, Mississippi Code, 1942, which has recently been ruled by a federal district judge:

> "A pure and simple peace law enacted by the Legislature in good faith to insure peace and tranquility among its people";
>
> Not "in anywise or to any extent involving either integration or segregation";
>
> "Applies alike to black and white citizens"; and
>
> "Is a perfectly natural and necessary exercise by the State of a well-known and well-recognized police power." (in spite of inflammatory criticism leveled at the statute).

(See *Elmer Brown v. State of Mississippi*, No. 3196-3200—Criminal, U. S. District Court, Southern District of Mississippi, opinion by Judge Harry Cox, filed August 26, 1961 (see Appendix C).)

Moreover, the statute in question is also practically identical with a 1923 statute of the State of New York which reads in part as follows:

> "Section 722. Any person who with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, commits any of the following acts shall be deemed to have committed the offense of disorderly conduct:
>
> "Congregates with others on a public street and refuses to move on when ordered by the police."

The New York statute has been held constitutional in the following cases:

People v. Nixon, 248 N. Y. 182, 161 N. E. 463, 466;

People v. Galpern, 259 N. Y. 279, 181 N. E. 572, 83 A. L. R. 785;

People v. Hipple, 263 N. Y. 242, 188 N. E. 725;

People v. Feiner, 300 N. Y. 391, 91 N. E. (2d) 316, and

Feiner v. New York, 340 U. S. 315, 95 L. Ed. 295, 71 S. Ct. 303.

In *Feiner v. New York*, *supra*, the United States Supreme Court said:

"Petitioner was afforded a full, fair trial. The trial judge heard testimony supporting and contradicting the judgment of the police officers that a clear danger of disorder was threatened. * * * The exercise of the police officers' proper discretionary power to prevent a breach of the peace was thus approved by the trial court and later by two courts on review. * * * there was no evidence which could lend color to a claim that the acts of the police were a cover for suppression of petitioner's views and opinions. Petitioner was thus neither arrested nor convicted for the making or the contents of his speech. Rather, it was the reaction which it actually engendered.

"The language of Cantwell v Connecticut, 310 U. S. 296, 84 L. Ed. 1213, 60 S. Ct. 900, 128 A. L. R. 1352 (1940) is appropriate here. 'The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts but acts and words likely to produce violence in others.'

"When clear and present danger or riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the State to prevent or punish is obvious. 310 U. S. at 308."

In truth and in fact, the statute under attack is (just as the New York statute is) a pure and simple disturbance and breach of the peace statute which vests authority in peace officers, when there is a clear and pres-

ent danger of disorder, excitement, riot or other breaches of the peace, to prevent such occurrence by ordering such persons to disperse or to move on (or both) as appears most likely to remove the present danger.

Likewise, it was not incumbent upon the officer to wait for a riot or other breach of the peace before taking steps to prevent it. See *People v. Nixon*, *supra*.

The following statement of the Court in *People v. Levner*, 30 N. Y. S. (2d) 487, is particularly applicable to this case and this statute:

> "Therefore, in spite of efforts to pose the question in the rarified constitutional atmosphere, it is apparent that this is merely a disorderly conduct case to be decided on its factual basis in conformity with the law of the State."

MOTION FOR DIRECTED VERDICT PRESENTED.

The defendants contend that, when the trial judge overruled the motion for a directed verdict at the close of the State's case in chief, Judge Dixon seemingly based his decision **solely** and entirely upon the single passing remark which he made **after** his ruling.

On the contrary, Judge Dixon made his formal ruling as follows:

> "The Motion for a Directed Verdict is overruled. I believe the State has shown a prima facie case."

That was the trial judge's actual ruling. Then followed a single statement relative to colored people going

into a white waiting room as being an act calculated to disturb and alarm the public. But that remark could not possibl be his **only** reason for finding facts proving a *prima facie* case.

For example, the judge did not mention any of these FACTS:

THE FACT that Dennis telephoned the city police, which caused an unusual number of City and State officers to be called out;

THE FACT that Dennis also telephoned the news media;

THE FACT that many persons became excited, restless and agitated;

THE FACT that many persons climbed over the seats and some stood on the seats;

THE FACT that all other persons (white and colored, soldiers and civilians, adults and teen-agers, passengers and nonpassengers) who were ordered to move on DID move on, with the SOLE EXCEPTION of the defendants on trial;

THE FACT that Bethune made a false statement concerning schedule when Dennis had already informed the police they were going to leave between 5:30 and 6:00 A. M.;

THE FACT that the defendants refused to obey at least **three** orders to move on;

THE FACT that Dennis and Blake drove rapidly away in Bethune's car and parked a block away, where they could observe activities;

THE FACT that Blake made false statements to Deputy Sheriffs Bryant and D'Artois denying that he had agreed the day before at his home to assist Dennis in this incident;

THE FACT that Blake made false statements to Deputy Sheriffs Bryant and D'Artois denying that he had brought his car to Dennis' home for use that morning if they could get other persons to join in;

THE FACT that Blake, although he testified, made no effort to explain or dispute the false statements by him described above;

NOR MANY OTHER FACTS which convinced the judge beyond a reasonable doubt that the State had made a *prima facie* case on the essential ingredients of the crime charged.

As shown above, there were many FACTS and factors that formed the basis of the trial judge's ruling, in addition to the single item mentioned by him in passing, which was surplusage, and which could not by any stretch of the imagination be the sole basis of his ruling.

DISTRICT JUDGE'S ORAL OPINION DISCUSSED.

What has just been said in the preceding numbered paragraph likewise applies to the defendants' contention concerning the judge's short oral opinion which he rendered in finding each of the accused guilty of the crime charged.

A trial court is not required to review all of the evidence and to give a complete index of all of the reasons

upon which he bases his decision in finding persons guilty. For example, he concluded his oral opinion by stating he found Blake to be a principal but did not positively state that he also found Dennis to be a principal. Yet he did find all of the defendants guilty.

Also, he named one particular in which he did not believe the testimony of Blake and Bethune to be truthful. But he did not elaborate on the fact that Blake himself acknowledged to Deputy Bryant and Deputy D'Artois that he had made false statements as set forth in the preceding numbered paragraph and, although Blake took the witness stand and testified, he never did explain or dispute the fact that he had so made false statements to those two officers.

Therefore, it cannot possibly be seriously contended that Judge Dixon based his decision that these defendants intended to provoke a breach of the peace (and were therefore guilty) on the **sole** ground that their presence was sufficient to show their intentions.

MOTION IN ARREST OF JUDGMENT AND MOTION FOR NEW TRIAL.

With reference to the motion in arrest of judgment and motion for a new trial, both of those motions merely reiterated the contentions that have already been thoroughly argued and passed on by the Court, some by Judge O'Neal and some by Judge Dixon. In those two motions the defendants now try to contend that Judge Dixon, in his oral remarks, was giving sanction to a policy of separation of races in public facilities under State law.

Suffice it to say, in this connection, this prosecution was for a "pure and simple" breach of the peace and did not involve any segregation or integration statute of the State of Louisiana.

MISCONDUCT OF DEFENDANTS.

For the defendants to claim in their application to the State Supreme Court that they were guilty of no misconduct, and sought passage in interstate commerce, simply constitutes begging the question.

In *State v. Mancini, 101 Atl. 581, 583 (Vt.)*, the Court said:

> "The question whether certain conduct constitutes a breach of the peace often depends largely upon the circumstances of the particular case. An act which would be lawful in some circumstances may amount to a breach of the peace if done in other circumstances. 8 R. C. L. 285."

Again, in *State v. Cooper*, 205 Minn. 333, 285 N. W. 903, 122 A. L. R. 727, 730, the Court stated:

> "That there was no outburst of violence was not due to his behavior, but to the fortunate circumstance that he was arrested and taken away before any trouble broke."

ELEMENTS OF DUE PROCESS PRESENT.

Relative to due process, the State shows the following elements are present in this case:

(1) A valid disturbance of the peace statute was enforced;

(2) It was enforced against all persons in and around the location involved without regard to race or color;

(3) There was a legal basis for the arrest;

(4) All defendants who refused to move on were warned that they would be arrested if they did not move on;

(5) Charges were filed and bail set promptly on the same morning;

(6) Prosecution in Court was by particularized bill of information;

(7) All defendants had counsel of their own choice who had ample opportunity to prepare their defense and to file and argue motions (which he did do);

(8) They were accorded a fair and impartial, speedy public trial;

(9) All defendants were given full opportunity to present evidence and to testify in their own behalf, but their entire defense consisted of the testimony of two of the defendants.

CONCLUSION.

As there is no substantial Federal question involved, and for the foregoing reasons, the petition for writ of certiorari should be denied as the proven facts demonstrate beyond a shadow of a doubt that these petitioners were guilty by their failure to obey the lawful orders of

the police under a lawful statute and they have shown they have no interest in the peace and tranquility of their community as a whole when balanced against their own desire to do as exactly as they saw fit.

Respectfully submitted,

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CERTIFICATE OF SERVICE.

I, M. E. Culligan, Assistant Attorney General of the State of Louisiana, a member of the Bar of the Supreme Court of the United States, hereby certify that a copy of this response to the petition for writ of certiorari to the Supreme Court of Louisiana has been deposited in the United States mail, postage prepaid, addressed to the attorneys for the petitioners, namely, Jesse N. Stone, Jr., Esquire, Attorney at Law, Shreveport, La., and Carl Rachlin and Judith P. Vladeck, 280 Broadway, New York 7, New York.

M. E. CULLIGAN, Asst. Attorney Gen.
Member of the Bar of the Supreme Court
of the United States.

APPENDIX A.

STATE OF LOUISIANA	:	NUMBER 45,851
	:	SUPREME COURT
vs	:	STATE OF
LEVERT H. TAYLOR, ET AL.	:	LOUISIANA

BRIEF IN SUPPORT OF STATE'S OPPOSITION TO THE APPLICATION FOR SUPERVISORY WRITS

STATEMENT OF THE CASE

Inasmuch as the facts of this case have been set forth in detail in Paragraph 2 of the State's opposition to Application for writs, only a brief summary thereof will be made in this brief.

During the early morning hours of August 4, 1961, the Chief of Police and Assistant Chief of Police of Shreveport received at least three telephone calls notifying them of a possible disturbance that might take place at the local bus station between 5:00 and 6:00 A.M. One of the defendants (Dennis) acknowledged that he telephoned both the police and the news media to that effect and requested the Police Department to have "plenty of officers" on hand.

As the result of those phone calls, several police officers and several Deputy Sheriffs were stationed on the inside and outside of the bus station. Two of the Defendants (Dennis and Blake) drove the remaining four defendants in Bethune's automobile to the station and sped

away, stopping about one block away where they could watch the activities at the station. The other four defendants walked past the interstate waiting room and, even though a police officer pointed out to them that they had just walked past the interstate waiting room (which they claimed to be their destination), they nevertheless went into the intrastate waiting room.

Once they made their entrance and began to crowd and congregate therein, many people became agitated and excited and scattered about, some climbing upon seats and some climbing over seats.

Various police officers ordered many people to move on, including white and colored people, passengers and non-passengers, adults and teen-agers. All such persons who were ordered to move on did so **with the sole exception of these four defendants.** They were ordered at least three times (possibly four times) to move on and, upon their failure to do so after being warned twice that they would be arrested if they did not do so, they were then all arrested and put in jail. All six defendants were charged in one Bill of Information with Disturbing the Peace, in violation of Article 103.1 of the Louisiana Criminal Code.

Dennis and Blake were charged as principals because they were accessories before the fact, having taken part in previous plans and meetings concerning this proposed disturbance and having likewise brought the other four defendants to the bus station in Bethune's car.

After argument upon various motions and requests made before Judge O'Neal, which were overruled, the de-

fendants were tried before Judge Dixon on August 18th and August 21st. All were found guilty of violating Article 103.1 of the Louisiana Criminal Code.

After Motions for a New Trial and In Arrest of Judgment were submitted and overruled, the defendants then applied to the Louisiana Supreme Court for Supervisory Writs, the Trial Court having granted a stay order and having released the defendants on bond.

ARGUMENT

Some of the minor claims of error (concerning Trial Court rulings) now urged by the defendants are, in our opinion, substantially answered in the State's Opposition and will not be reargued in this brief.

The defendants have endeavored strenuously to claim that their constitutional rights have been invaded, whereas the State contends that this is merely a prosecution of a misdemeanor involving a "pure and simple" disturbance and breach of the peace statute. The dedendants likewise have tried desperately to contend that the enforcement of this statute is an effort by the State to further and maintain segregation of the races in Louisiana.

At the outset, we wish to point out to the Court that (as shown on the trial of this case and as set forth in the State's Opposition) at least two sets of facts and circumstances abundantly show that, both in the past and on this occasion, this statute has been administered and enforced impartially and indiscriminately against all persons attempting to violate it, both white and colored.

These two sets of facts and circumstances are as follows:

(1) On this very occasion at the bus station various police officers ordered many other persons in addition to the defendants to move on and all of them did so (except the defendants) and therefore they did not violate the statute and were not arrested.

This included people in the intrastate waiting room, people that erupted from the restaurant, and people on the east, west and south sides of the bus station (and therefore not in the intrastate waiting room). This also included white and colored persons, passengers and non-passengers, male and female, teen-agers and adults.

(2) Inasmuch as one of the preliminary defense motions indicated a contention that this statute in its administration was being enforced only against colored persons, the State in its case in chief on the trial adduced ample evidence showing that this statute has been used and enforced against white and colored people, including teen-agers and adults, at many other locations besides the bus station. Some of these other locations are in front of a certain down town variety store, in front of a down town bank, at the entrance of a down town Billiard Parlor, at various cafes in the city, at certain drive-in restaurants and even on the State Fair Grounds.

Therefore, we believe that, inasmuch as the statute has been enforced as a regular disturbance of the peace statute and not as a means of maintaining segregation, the only remaining issue is whether or not, for any reason,

the statute could possibly be deemed to be in conflict with the Fourteenth Amendment to the U. S. Constitution.

On this remaining issue, we wish to point out to the Court that in *State v. Goldfinch*, Number 45, 491 on the docket of the Supreme Court of Louisiana (not yet reported—decided June 29, 1961) the Louisiana Supreme Court examined this very statute (Article 103.1—Act 69 of 1960) because of a similar contention made in that case.

In the Goldfinch case, the defendants, in aid of an attack upon the statute there involved (contending that it was designed to apply to and to be enforced arbitrarily against the colored race), actually offered in evidence certain other statutes, including Act 69 of 1960. In the Goldfinch case, the Louisiana Supreme Court said in answer to that contention:

> "We have carefully reviewed the provisions of these bills referred to which were enacted into law and no where in this content or context do we find that any of them seek to discriminate against any class, group, or race of persons. We therefore find no merit in this contention and, accordingly, dismiss it as being unsupported."

In *Elmer Brown, et al v. State of Mississippi*, Number 3196-3200-Cr., U. S. District Court, Southern District of Mississippi, (not yet reported; see certified copy of opinion attached to State's Opposition), the statute involved was Section 2087.5, Mississippi Code 1942, which in subsection 1 (1) is **identical** to Article 103.1 of the Louisiana Criminal Code. In the Brown case, the Court said:

"Much inflamatory criticism is leveled at that statute but the statute is a perfectly natural and necessary exercise by the State of a well-known and well-recognized police power. Petitioners endeavor in argument with desperation to convert that statute into a heavily veiled segregation statute. It is likewise attempted by astute counsel to convert this case into a segregation case. Actually this case cannot be treated or regarded by anyone in search of the truth or in quest of justice as a case in anywise or to any extent involving either integration or segregation. * * * They were arrested and convicted in the Justice of the Peace Court for a willful breach and violation of this peace statute. * * * the State of Mississippi has several segregation statutes which clearly deal with that subject as a part of its local jurisprudence. But Section 2087.5, Mississippi Code 1942, is not such a statute. It is a pure and simple peace law enacted by the Legislature in good faith to assure peace and tranquility among its people. * * * They had no civil right to incite a riot or to provoke mob violence. The arresting officer promptly and efficiently and very properly discharged his duty in arresting each of these criminals under such circumstances.

"This record does not show that this statute destroys or abridges any civil right of either of these Petitioners. * * * This state statute applies alike to black and white citizens just as it was enforced in the case at bar without distinction as to race or color."

Therefore, Courts in both the States of Mississippi and Louisiana have held that this statute is not a segregation statute but simply a disturbance of the peace statute.

Likewise, the United States Supreme Court in *Feiner v. New York, 340 U.S. 315, 95 L. ed. 295, 71 S. Ct. 303*, has held that a similar New York statute was constitutional and did not encroach upon any constitutional rights under the Fourteenth Amendment or Bill of Rights of the U.S. Constitution. The New York statute involved in the *Feiner* case reads as follows:

> "Section 722. Any person who **with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned,** commits any of the following acts shall be deemed to have committed the offense of disorderly conduct:
>
> "(3) **Congregates with others** on a public street **and refuses to move on when ordered by the police.**" (Emphasis supplied)

In the *Feiner* case, the U. S. Supreme Court said:

> " 'When clear and present danger of riot, disorder interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the State to prevent or punish is obvious.' 310 U. S. at 308."
>
> (Quoting from *Cantwell v. Connecticut, 310 U. S. 296)*
>
> * * * Nor in this case can we condemn the considered judgment of three New York courts ap-

proving the means which the police, faced with a crisis, used in the exercise of their power and duty to preserve peace and order. The findings of the state courts as to the existing situation and the imminence of greater disorder coupled with **petitioner's deliberate defiance of the police officers** convince us that we should not reverse this conviction in the name of free speech." (Parentheses and emphasis supplied)

An earlier New York case involving the **identical New York statute** is *People v. Galpern, 259 NY 279, 181 N.E. 572, 82 ALR 785.* In that case Galpern (an attorney) with several friends had been to a meeting and some of them desired to go to a restaurant. It was near midnight one summer evening and they were standing on the sidewalk talking. Other groups were standing nearby. A police officer ordered them to move on which Galpern refused to do, although the defendant did not use any threatening, abusive or insulting language or behavior. The Appellate Court assumed that the defendant in good faith believed the officer's directions to move on to be arbitrary and likewise that the defendant's failure to obey was not intended as a defiance of the authority of the officer. Nevertheless, the Court held:

"* * * but they must 'move on' when a police officer so directs for the purpose of avoiding possible disorder that otherwise might ensue. **The Legislature has provided that failure to obey such direction in itself is disorderly** conduct. * * * The Courts cannot weigh opposing considerations as to the wisdom of the police officer's directions when a

police officer is called upon to decide whether the time has come in which some directions are called for." (Emphasis supplied)

The language of the Court in *People v. Thorpe, 198 Misc. 462, 101 NY S (2d) 986, 990,* is appropriate to the case at bar, thus:

"Defendants' course, (of conduct) therefore, **was calculated to occasion a breach of the peace.**

People v. Hipple, 263 NY 242, 244, 188 N.E. 725, 726. "It is not pre-requisite to arrest on a charge of disorderly conduct (disturbing the Peace) that a breach of the peace shall have actually occurred. *People v. Feiner, 300 NY 391, 91 N.E. (2d) 316,* affirmed 71 S. Ct. 303. The defendants' conduct, at the very least, was such that it intended to disturb the public peace and quiet and to occasion a breach of the peace. That, under our cases, is sufficient.' *People v. Feiner, Supra, 300 NY 399, 91 N.E. (2d) 319.*

"* * * The police officer was, therefore, justified in arresting the defendants at their invitation. The evidence establishes their guilt. * * *" (Parentheses and emphasis supplied)

Other cases involving the statute in the Feiner case are:

People v. Hossock (1940) 6 Misc. (2d) 182, 23 NYS (2d) 520, cert. den. 312 US 659, 85 L Ed. 1107, 61 S. Ct. 733, in which the defendant's **conviction for** causing a crowd to collect on a public street while selling magazines, and **refusing to obey** a

policeman's order to move on, was affirmed against contention that the statute vested arbitrary and discriminatory power in the police.

People v. Friedman (1939) 6 Misc. (2d) 271, 14 NYS (2d) 389, in which a conviction was upheld over defendant's contention that the police acted arbitrarily in violation of his constitutional rights, where the defendant held a public meeting on a busy street and refused to obey a patrolman's order to move on, the court saying that a **failure, even though conscientious, to obey, may** interfere with the public order and **lead to a breach of the peace,** and in this case the **accused insisted on speaking after he was warned** to cease, **in violation of the statute.**

People v. Rozensweig, 12 NYS (2d) 795, and

People v. Rothenberg, 15 NYS (2d) 447, which held that failure to move on when ordered to do so, is a violation of the statute, even though there was no disorder otherwise than such refusal.

People v. Lo Vecchio 185 Misc. 197, 56 NYS (2d) 354, in which the Court said:

"**None of these decisions** should be construed as granting limitless and boundless freedom to any individual **to decide for himself whether or not he will obey any particular law.** If rights become thus inflated, they become privileges which, in their turn, destroy other rights of equal value.

"• • • **whenever any one person declares that he** or she **will be** the **sole judge** of whether or not the

law will be respected and obeyed, **anarchy has found its roots in a nation dedicated to lawful authority.**

"In the instant cases, due respect for law and lawful authority should have prompted defendants to obey the officer's directions which were not arbitrary or capricious * * *" (Emphasis added)

People v. Ward 159 Misc. 328, 287 NYS 432, afrmd 272 NY 615, 5 NE (2d) 359, in which the defendants were ordered by a police officer to disperse and move on and upon their refusal, they were arrested. The court held that even if, as they contended, defendants were merely attempting in good faith to test a police regulation, this did not matter if defendants' acts constituted disorderly conduct (under Sec. 722 of New York Penal Law).

Another regulation that is similar to the statute in the States of Louisiana, Mississippi, and New York, as discussed above, is found in *Benson v. City of Norfolk (Va.) 177 S.E. 222*, involving an ordinance passed by the City of Norfolk in 1907. The ordinance reads in part as follows:

"Any person or persons, * * * loitering or standing on any of the streets or ways of the city, shall, when required so to do by any member of the police force, move on, or any group of persons standing shall separate and move on, and cease to occupy such position on the street or way, under penalty of * * *."

The constitutionality of the ordinance was upheld and the court said:

> "It is, in our opinion, most salutary that the police officers of a municipality should have reasonable authority and discretion. Indeed, in exigencies, it is vital to the welfare of the community.
>
> "Courts should assume, initially, that they will exercise their discretion and authority in a fair and reasonable way.
>
> "See *State of Minnesota v. Sugarman, 126 Minn. 477, 148 N.W. 466, 52 L.R.A. (N.S.) 999; Commonwealth v. Challis, 8 Pa. Super, 130; City of Chariton v. Simmons, 87 Iowa 226, 54 N.W. 146; People of New York v. Galpern, 259 N.Y. 279, 181 N.E. 572, 83 A.L.R. 785.*
>
> "The above-cited cases deal somewhat with contentions similar to those urged by the plaintiff in error here. The conclusions are the other way."

SEE ALSO

Bennett v. Dalton (1943) 69 Ga. App. 438, 25 SE (2d) 726, app. dismd. 320 US 712, 88 L. Ed. 418, 64 S. Ct. 197, where it was shown that while defendants were passing out religious pamphlets, one of them was assaulted by a third person, causing a crowd to gather, which was later noticed by a policeman, who, unaware of the assault, saw the defendants, after the attacker had left, in the middle of a crowd talking in a loud manner, and after asking them to move on for the purpose of breaking up the crowd, arrested them upon their refusal to obey.

The court said that the **refusal to move on after being directed to do so by an officer of the law, constituted disorderly conduct.** (Statutes involved were city ordinances in general terms relating to disorderly conduct and acting in a disorderly manner.)

The most recent case in point is *Tinsley v. City of Richmond* (*Va.—April 24, 1961*) 119 SE (2d) 488, in which the violation was of a 1909 City ordinance reading as follows:

"Any person loitering or standing on the street, sidewalk or curb **shall move on** or separate **when required to do so by any member of the Police Bureau** and shall not thereafter occupy such position on the street, sidewalk or curb."

In citing *State v. Saggerman, Supra* and *City of Tacoma v. Roe 190 Wash.* 444, 68 P. (2d) 1028, the Court approved and quoted from *People v. Galpern Supra* and *Benson v. City of Norfolk supra*, and said:

"We re-adopt these views and hold them to be controlling in the case now before us." (referring to *Benson v. City of Norfolk.*)

"* * * **She deliberately placed herself in an emotion-packed situation, where at any moment trouble could have erupted,** causing danger to the defendant and to the others on the sidewalk. She was told THREE TIMES by a uniformed officer TO MOVE ON; **when she refused her offense was complete.**

"The police officer was under no obligation to stand and argue with the defendant. To have done so would have defeated the very purpose of the ordinance and the reason for keeping everyone moving—**the maintenance of order.**" (Parentheses and emphasis supplied)

Therefore, it is respectfully submitted that both the statute and Bill of Information are valid, there is no error in any of the Trial Court's rulings, and the application for Supervisory and Remedial Writs should be refused and denied.

Respectfully submitted,

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APPENDIX B.

STATE OF LOUISIANA

V

LEVERT H. TAYLOR, ET AL.

NO. 57,562
FIRST JUDICIAL
DISTRICT COURT
CADDO PARISH,
LOUISIANA

ON MOTION TO QUASH

The defendants in the above and entitled cause, being six in number, charged under R.S. 14:103.1 with disturbing the peace, filed a motion to quash the bill of information on five grounds, which motion was argued and submitted.

(1) It is alleged that the statute defining the offense under which the defendants are charged should be quashed for lack of clarity, as the statute lacks the clarity required by the Federal and State constitutions, in that there is no standard to apprise the defendants what is prohibited, particularly in reference to the words "crowd and congregates with others."

We see no merit to this contention. Two or more make a "crowd". We think that when the statute prohibits a person congregating with others, etc., the words used are of common import, and such person can clearly understand same. Furthermore, the charge filed herein charges six persons with having "congregated".

(2) The second point is without merit as the statute does not prohibit persons from "peaceable assembly."

The statute prohibits breaches of the peace as defined therein.

(3) The third ground of the motion to quash alleges that the defendants are denied the "equal protection" clause of the 14th Amendment to the Constitution of the United States, for the reason that labor unions are exempted under the statute.

Labor unions are regulated by a different law and, as we understand the jurisprudence, reasonable exceptions may be made in a statute without rendering the statute unconstitutional.

(4) Defendants allege that the statute under which defendants are charged violates the "due process" and "equal protection" clauses of the 14th Amendment to the Constitution of the United States, in that it has for its purpose furthering and maintaining the State's policy of forced segregation in the state of Louisiana at the places designated in the statutes; and in the alternative, that it is being administered in a fashion to deny members of the negro race rights accorded to them under the "equal protection" and "due process" clauses of the Constitution, by exacting of the (defendants) criminal penalties for seeking to use facilities not specifically designated for members of their race.

The statute applies to all persons, whether white or colored, and has no reference whatever to the segregation of the races. While the statute may be used to prosecute those who attempt to individually enforce desegregation or violate segregation statutes, it applies to white as well as

to colored people and (so far as we recall) the statute applies to places not covered by any segregation statute. It prohibits persons congregating with others with the intent to provoke a breach of the peace . . . in or upon . . a public street or public highway or upon a public sidewalk.

(5) The allegations contained in paragraph five are inapplicable to the present law, as the segregation statutes are not involved in this proceeding. The complaint in this section might be applicable to a statute providing for a segregation of the races if the defendants were charged with violating such law. The defendants are not charged with violating the segregation laws. They are charged with disturbing the peace. A person may have the legal right to go to his church or walk upon the streets, but he cannot do it if he breaches the peace in so doing.

Under the terms of the statute, if six white persons did the same thing that these six defendants were charged with having done, they would be subject to prosecution for the same offense.

For the reasons assigned the motion to quash is overruled.

Signed ROBT. J. O'NEAL
District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

ELMER BROWN — PETITIONER
VS. NO. 3196-Cr.
STATE OF MISSISSIPPI — RESPONDENT

JAMES CAREY — PETITIONER
VS. No. 3197-Cr.
STATE OF MISSISSIPPI — RESPONDENT

JUDITH FRIEZE — PETITIONER
VS. NO. 3198-Cr.
STATE OF MISSISSIPPI — RESPONDENT

ORVILLE LUSTER — PETITIONER
VS. NO. 3199-Cr.
STATE OF MISSISSIPPI — RESPONDENT

SHIRLEY SMITH — PETITIONER
VS. NO. 3200-Cr.
STATE OF MISSISSIPPI — RESPONDENT

OPINION

The Petitioners invoked 28 U.S.C.A. Section 1443 to remove these criminal prosecutions here from the County Court of Hinds County. The State of Mississippi moved to remand the cases for lack of jurisdiction in this Court. The propriety of the removal is determined from the case made by the record in the State Court. No testimony was adduced here by either party. The Petitioners were convicted in the Justice of the Peace Court on a vio-

lation of a State peace statute appearing as Section 2087.5, Mississippi Code 1942. Much inflammatory criticism is leveled at that statute but the statute is a perfectly natural and necessary exercise by the State of a well-known and well-recognized police power. Petitioners endeavor in argument with desperation to convert that statute into a heavily veiled segregation statute. It is likewise attempted by astute counsel to convert this case into a segregation case. Actually this case cannot be treated or regarded by anyone in search of the truth or in quest of justice as a case in anywise or to any extent involving either integration or segregation. Three of the five Petitioners here are white and were arrested in white facilities of some public agency in Jackson. They were arrested and convicted in the Justice of the Peace Court for a wilful breach and violation of this peace statute. As pointed out by Petitioners' counsel in the argument, the State of Mississippi has several segregation statutes which clearly deal with that subject as a part of its local jurisprudence. But Section 2087.5, Mississippi Code 1942, is not such a statute. It is a pure and simple peace law enacted by the Legislature in good faith to assure peace and tranquility among its people. These Petitioners heralded their arrival in Jackson from other states for provocative purposes. Their status as interstate passengers is extremely doubtful. Their destination was Jackson but their objective was trouble. They were arrested and tried according to the local court because of the provocative circumstances under which they appeared at the time in this particular place. They had no civil right to incite a riot or provoke mob violence. The arresting officer promptly and efficiently and very properly discharged his duty in arresting each of these criminals under such circumstances. This Court

may not be regarded as any haven for any such counterfeit citizens from other states deliberately seeking to cause trouble here among its people. Boynton v. Virginia, 364 U.S. 454, and Gomillion v. Lightfoot, 364 U.S. 339, and similar authorities are relied on by Petitioners. Those cases involved instances where citizens were actually divested of their civil rights. Surely the Court has the right to pierce the veil of any statute to determine whether or not it indirectly accomplished that which it could not directly do in such respect. In the Boynton case this bona fide interstate passenger was denied food in the white section of the interstate bus restaurant. In the Gomillion case negro citizens were divested of their right to vote and their right to enjoy the use of their property in the City of Tuskegee by a statute of Alabama which changed the shape and size of the municipality so as to exclude most of the negroes from the now twenty-eight sided municipality. The contrast in such cases with the case at bar does not require analysis or discussion.

This record does not show that this statute destroys or abridges any civil right of either of these Petitioners. Hull v. Jackson County Circuit Court, 6 C.C.A., 138 F. (2d) 820. This state statute applies alike to black and white citizens just as it was enforced in the case at bar without distinction as to race or color. It is not without significance that this federal civil rights statute has never been successfully invoked in a case of this kind cited to this Court. An independent research has not revealed any such case in this age of myriad litigation and it must be assumed that this statute was not designed or intended to serve any such purpose or some court would have said so within three quarters of a century. In Steele v.

Superior Court of California, 9 C.C.A., 164 F. (2d) 781, it was held that a criminal prosecution could not be removed under this statute for a violation of a civil right of the accused by a police officer in making an unlawful search and seizure in violation of his constitutional rights. The Court said that a petitioner in such a case must clearly show a violation of the equal protection clause of the Fourteenth Amendment. Such is the import of State of Texas v. Dorris, 165 F. Supp. 738, where the Petitioner sought a removal to the Federal Court under this Section 1443, Title 28 United States Code, on the ground that he could not possibly get a fair trial in the courts of Brooks County for a misdemeanor for which he was charged and the Court said:

> "Since the denial of equal rights which will justify a removal must be the result of the constitution or laws of the state, there is no right of removal where the alleged discrimination against defendant, in respect of his equal rights, is due to illegal or corrupt acts of administrative officers, unauthorized by the state constitution or laws * * * The removal provision under consideration does not contemplate a removal where neither the constitution nor laws of the state deny the litigant his civil rights, but where there is a criminal misuse or violation of the state law by some subordinate office which results in depriving the litigant of the rights which the state law accords to him. Alleged existence of race prejudice, interfering with a fair trial, is not ground for removal, where the prejudice cannot be attributed to the state constitution or laws. It is not cause for removal that jury commissioners or other subordinate officers have, without authority derived from the

> constitution or laws of the state, excluded colored citizens from juries because of their race, or excluded from the jury every person, however competent, who belonged to the same political party as the accused."

A careful examination of the authorities cited by able counsel on both sides leads this Court to the inescapable conclusion that it has no jurisdiction because these cases were improperly removed here. The motions to remand these cases are therefore sustained and a proper order may be taken therefor.

This August 26, A. D., 1961.

HARRY COX
UNITED STATES DISTRICT JUDGE.

A TRUE COPY, I HEREBY CERTIFY.
LORYCE E. WHARTON, CLERK
BY:
J. SPEIGHTS,
Deputy Clerk